signaling to FGD signaling when providing interconnection to CLECs' operator services platforms that use FGD, id., BellSouth is unwilling to make the necessary network modification.

The Act requires incumbent LECs to provide interconnection on terms that are "just, reasonable, and nondiscriminatory," 47 U.S.C. § 251(c)(2), and the Commission has found that this obligation "include[s] modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection." First Report and Order ¶ 198. Because the "incumbent LEC networks were not designed to accommodate third-party interconnection," incumbent LECs must be required to "adapt their facilities to interconnection or use by other carriers," or else the purposes of Section 251(c)(2) will be frustrated. Id. ¶ 202. Translation of MOS to FGD is just such an adaptation. FGD is not a new technology demanded by CLECs while unavailable to ILECs -- BellSouth already uses FGD in its network, including for purposes of passing interLATA and intraLATA toll operator services traffic to IXCs. See Henry Decl. ¶ 51. Yet BellSouth will not pass CLECs' local operator services traffic using FGD.

The anticompetitive effect of BellSouth's refusal to provide usable customized routing to CLECs' own operator services platforms is exacerbated by the impracticability of the alternative offered by BellSouth. If MCI cannot handle its customers' operator services calls at its own platform, the next best option would be to route those calls to BellSouth's operator services platform and have them branded with the MCI name. Id. ¶ 52. However, BellSouth will not provide branding on operator services calls unless the CLEC orders dedicated trunking between BellSouth's operator services platform and every end office from which the CLEC wants operator services calls to be branded. See id.; Varner Aff. ¶ 143. This is an unreasonable requirement that would result in a grossly inefficient and costly parallel network for each CLEC seeking branded operator services. See Henry Decl. ¶ 52. It is also unnecessary, as BellSouth could simply route the calls to its operator services platform over its usual trunk groups and brand them on the basis of the ANI of the call. Id. ¶ 53. BellSouth therefore violates checklist items (i), (ii), (vi) and (vii).

B. Reciprocal Compensation. BellSouth does not provide for reciprocal compensation for termination of calls because it fails to recognize that MCI's and other CLECs' switches can perform the same functions as BellSouth's tandem switches. See id. ¶¶ 57-58. BellSouth's network utilizes a "star" topography, in which several local switches subtend a central tandem switch. CLEC networks, by contrast, generally utilize a "ring" technology, in which a single switch connected to a fiber ring serves an equivalent geographic area. In the CLEC network, call termination that would require tandem switching in BellSouth's network is accomplished with the single switch. However, BellSouth will not compensate MCI at the rate that BellSouth is compensated for tandem switching. See SGAT § XIII. & Att. A, p. 7. BellSouth will pay the CLEC only the end office termination rate even when the CLEC switch has the same functionality and geographic scope of a BellSouth tandem. See Henry Decl. ¶ 57. This is not reciprocal compensation as required by section 251(b)(5) and item (xiii) of the checklist.

The Commission has previously approved the use of symmetrical rates when new technologies perform similar functions to those performed by the incumbent's tandem switch. See First Report and Order ¶ 1090. CLECs' switches indisputably perform the same functions as BellSouth's tandems, see Henry Decl. ¶ 58, and CLECs should therefore be compensated at the same rate. This conclusion has recently been reached by at least two federal district courts that have considered ILECs' arguments that they must pay only end office rates for termination over CLECs' switches. See MCI Telecomm. Corp. v. Bell Atlantic-Virginia, Inc., No. 3:97CV629, slip op. at 20 (E.D. Va. July 1, 1998); U S West Comm. Inc. v. MFS Intelnet, Inc., No. C97-222WD, slip op. ¶ 6 (W. D. Wash. Jan. 7, 1998) (ex. W).

BellSouth also fails to satisfy checklist item (xiii) because it refuses to pay reciprocal compensation for local traffic that is terminated to Internet service providers ("ISPs"). BellSouth insists that traffic to ISPs is interstate in nature, because the Internet connects with sites in other states and other countries, and that such traffic is therefore exempt from local interconnection charges. See BST Br. 60; Varner Aff. ¶¶ 196-97. BellSouth is incorrect. Although Internet traffic carried over the ISP's Internet network might indeed cross the country or the world, the call from the end user to the ISP is generally a local call. See Henry Decl. ¶ 59. The end user is not calling a number in another state or country, but rather a number in the same local calling area. See id. Two federal district courts and nineteen state commissions have rejected the position advanced by BellSouth and other ILECs.[44/] This is a deficiency in BellSouth's compliance with the competitive checklist -- it is no more a mere "contractual dispute," BST Br. at 60, than, for example, is BellSouth's refusal to make network elements available for combination on nondiscriminatory terms.

C. Interim Local Number Portability. Finally, BellSouth has not complied with item (xi) of the checklist because of its frequent failure to provide interim local number portability ("ILNP") in coordination with local loop cutovers. BellSouth's coordination errors have repeatedly caused MCI's customers to lose service when switching from BellSouth to MCI. See Henry Decl. ¶¶ 60-62. These errors are extremely harmful to competition, as they discourage BellSouth's customers from taking advantage of the competitive services offered by MCI. See id. ¶ 62. Thus, BellSouth is rewarded for its incompetence in handling ILNP cutovers. To reverse this, BellSouth should not be found to have complied with the checklist until it provides ILNP cutovers at the precise time the cutover is scheduled to occur.

VI. BELLSOUTH AGAIN HAS FAILED TO DEMONSTRATE THAT IT WILL COMPLY WITH THE REQUIREMENTS OF SECTION 272

An independent ground for denying the application is that BellSouth has not demonstrated that "the requested authorization will be carried out in accordance with the requirements of Section 272," as section 271(d)(3)(B) requires. It is BellSouth's burden to demonstrate prospective compliance with

---

44/ See Illinois Bell Tel. Co. v. Worldcom Technologies, No. 98 C 1925, slip op. at 7-29 (N.D. Ill. July 21, 1998) (ex. X).

section 272. But BellSouth's affidavits essentially amount to nothing more than general and conclusory assertions that BellSouth, BellSouth Telecommunications, Inc. ("BST"), and BellSouth Long Distance, Inc. ("BSLD") will comply with section 272, and BellSouth has almost gone out of its way to avoid the critical practical issues. As with sections 251 and 252, the devil in section 272 is in the details. The hard compliance issues under section 272 involve the application of the general statutory and interpretative regulations to specific situations that present significant risks of discrimination in favor of the section 272 affiliate. For a BOC to discharge its burden under section 271(d)(3)(B), it cannot merely parrot the language of section 272 and the Commission's interpretative decisions; it must show specifically how it will comply with the requirements of section 272 by explaining how it will apply in practice the principles it purports to accept in theory.

The Commission should reject BellSouth's application as incomplete and insufficiently specific to satisfy section 271(d)(3)(B). To prevent refiling of patently inadequate applications, the Commission should use its decision denying BellSouth's application as an opportunity to set forth the specific commitments a BOC must make in order to carry its burden under section 271(d)(3)(B) and submit a complete and sufficient application.

A. BellSouth Has Not Demonstrated Present or Future Compliance With Respect to Section 272's Disclosure Requirements.

To satisfy section 271(d)(3)(B), a BOC must demonstrate that it has the ability to comply, and will comply, with the disclosure requirements of section 272. Section 272(b)(5) requires a BOC and its long distance affiliate to conduct all transactions between them at arm's length, "with any such transactions reduced to writing and available for public inspection." The affiliate must "at a minimum . . . provide a detailed written description of the asset or service transferred and the terms and conditions of the transaction on the Internet within 10 days of the transaction through the company's home page."[45]

BellSouth contends that it is not required to comply with the disclosure obligations of section

---

45/ Report and Order, Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, ¶ 122, 12 F.C.C.R. 2993 (rel. Dec. 24, 1996) ("Accounting Safeguards Order") (emphasis added).

272(b)(5) and the Accounting Safeguards Order before receiving section 271 authorization. BST Br. 67; Varner Aff. ¶ 219. However, the Commission has ruled that a BOC must disclose consistent with section 272 any transaction between itself and a long distance affiliate occurring after the enactment of section 272 on February 8, 1996. Mich. Order ¶ 371. In any event, at least when the section 272 affiliate begins to provide in-region interLATA service, section 272 plainly obligates BellSouth to disclose the terms and conditions under which the entity subsequently incorporated as BSLD received any assets or services from BST prior to incorporation. Only in this way can unaffiliated competitors obtain the same deals on the same basis. BellSouth's long distance affiliate will have an "unfair advantage over competitors when it sells in-region, interLATA services," BST Br. 66, if it is the beneficiary of substantial assistance from the BOC that occurred in the months (or years) before it started to provide in-region long distance service and that has not been disclosed.[46/] Equally important, if a BOC provides resources, employees, or information to support the future long distance business before its section 272 affiliate is formally established, the BOC must properly record and disclose these efforts as they happen, because it would be impossible as a practical matter to recreate them months later after the fact.

Accordingly, to carry its burden under section 271(d)(3)(B), a BOC must represent, in an affidavit, that either (1) as of the date of the application, it has not engaged in any activity that will benefit the section 272 affiliate, or (2) it has disclosed all such activities consistent with the requirements of section 272(b)(5). Regardless of any claim that it is not legally required by section 272 to comply with these disclosure requirements until it gets section 271 authority, a BOC should disclose this information in order to give interexchange carriers ("IXCs") timely access and to carry its burden under section 271(d)(3)(B) to demonstrate in concrete terms its understanding of these disclosure obligations.[47/]

46/ As MCI has argued in the Commission's preliminary biennial audit requirements proceeding (AAD 97-83), transactions between the BOC and its section 272 affiliate before that affiliate is fully organized and staffed may present a serious threat to competition.

47/ Impracticality of disclosure is no excuse. If it is impractical for the BOC to disclose this information at the time of the section 271 application, it will be impractical for the BOC to disclose it later, thereby demonstrating that the BOC will not ever comply with its section 272 obligations.

Delay in disclosing information shared with the BOC's long distance business will itself injure unaffiliated long distance companies that are entitled under section 272 to obtain access to information simultaneously with the long distance arm of the BOC. A BOC's refusal to provide this information on a timely basis is, at a minimum, "highly relevant" to the Commission's predictive judgment about whether the BOC will make full and timely disclosure as required by section 272. See Mich. Order ¶ 366 ("the past and present behavior of the BOC applicant is highly relevant" to this judgment).

BellSouth has not demonstrated that it will comply with the reporting requirements relating to affiliate transactions. BellSouth's application is vague as to whether it has disclosed all past transactions with BSLD.[48/] Moreover, BellSouth plainly has not disclosed the details of the substance, terms, and conditions of the BST-BSLD transactions that it has reported, as required by section 272(b)(5). BellSouth persists in its position that transactions prior to August 31, 1997 do not require any description beyond a paragraph summary. Its repeated failure to provide more than a one paragraph summary of its past affiliate transactions should be sufficient cause to deny its application. Moreover, the twelve current agreements, although appearing to be fully set forth, are also deficient.[49/] BellSouth's partial disclosures of particular transactions raise more questions than they answer; these disclosures provide the FCC and competitors with no assurances that BST conducted the transactions on an arm's length, nondiscriminatory basis, and include no indications that unaffiliated carriers were given an equal opportunity to deal with BST.[50/]

48/ BellSouth merely lists past transactions between BST and BSLD but does not state that it has listed all past transactions. See Wentworth Aff. ¶ 14c.

49/ For example, the "BST/BSLD Global Calling Card Trial Marketing and Sales Agreement" between BST and BSLD provides that BST will market BSLD's "Global Card" services. Wentworth Aff., ex. 4. There is nothing to indicate when "the first performance of service" was or will be, so such services may have already begun. There is also nothing to indicate that the Global Card products subject to the trial agreement are limited to intraLATA services. Thus, this agreement appears to provide for BST marketing and sales of BSLD interLATA services prior to section 271 authorization, in violation of section 272(g)(2).

50/ To take just one example: Appendix A of the facility use agreement identifies a piece of equipment and cryptically alludes to service testing, and Appendix B indicates a fee of $42,250 for such facility and services, yet there is no description of what was or is being done with this equipment such that third parties could determine whether that charge was appropriate or whether the service involved is

B. BellSouth Has Not Demonstrated Present or Future Compliance With Section 272's Nondiscrimination and Separate Operation Requirements.

Sections 272(c)(1) and (b)(1) constitute separate and discrete nondiscrimination requirements.[51/] BellSouth has not demonstrated that it has complied, or will comply, with the requirement that the BOC and the affiliate operate on a nondiscriminatory, arm's length basis.

A number of areas present obvious dangers of discrimination and favoritism. To comply with section 271(d)(3)(B), the BOC should be required to address specifically and comprehensively in its application how it has complied, or will comply, with section 272 in these areas. These areas include, at a minimum, a BOC's interLATA official services network, transfer of employees, use of collocation, introduction of new services, and brand names. BellSouth does not address most of these areas, and none in any serious way.

Official Services Network. BellSouth still fails to address whether and how BSLD will utilize BST's official services network to provide in-region interexchange service. BellSouth apparently constructed these networks with far more capacity than it could ever use for official services.[52/] BellSouth's application and supporting affidavits do not address whether BSLD has any plans to use BST's official services network, and if so, on what terms. Nor has BellSouth indicated whether there have been any discussions between BST and BSLD about BSLD's potential use of these networks. BellSouth makes only conclusory assertions about its compliance with the Commission's order concerning use of official services networks. See Varner Aff. ¶¶ 224, 245.

To eliminate any doubt about what a complete section 271 application must contain, the Commission should clarify in its decision that a section 271 application must directly state whether the

---

available to competing carriers on the same terms and conditions. See Wentworth Aff., ex. 4.

51/ First Report and Order, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, ¶ 156, 11 F.C.C.R. 21905 (rel. Dec. 24, 1996) ("Non-Accounting Safeguards Order").

52/ See, e.g., Testimony of Joseph Gillan on Behalf of the Florida Interexchange Carriers Association Before the Florida Public Service Commission, Docket No. 920260-TL (filed Nov. 8, 1993) (ex. Y).

BOC will make any portion of its official services network available to its section 272 affiliate, and, if so, on what specific terms and through what specific process, to ensure that all entities have an equal opportunity to obtain access to the networks. See Non-Accounting Safeguards Order ¶¶ 218, 266.

Employee Reassignments. BellSouth reveals that approximately one-third of BSLD's employees transferred from "a local telephone operating company" (presumably BST). BST Br. 67. BellSouth does not disclose how these employees chose (or were chosen) to be reassigned or how BST facilitated BSLD's selection and hiring of these employees. MCI does not dispute that BSLD has a "right to hire from the same talent pool" as MCI and other IXCs, see BST SC Reply Comments 84, but the unusual success that BSLD has enjoyed suggests that it has advantages that competing carriers do not share. At a minimum, BellSouth should be required to make full disclosure of the process by which these employees were selected and transferred.

BellSouth's application does not contain sufficient information to permit the Commission to determine whether BST strategically provided BSLD, through these reassignments, with competitively sensitive information about BST's operations, network, and future actions. The information that these employees took from BST to BSLD would be extremely useful to IXCs that interconnect with BST and that constantly are developing new products and services that require interconnection with BST's current and future network. BellSouth claims that there is not "any risk that former BST employees BSLD has hired will serve as improper conduits of confidential information" because these employees are bound by the same confidentiality requirements as other BellSouth employees and sign the same acknowledgment of receipt of a handbook that tells them not to use proprietary information improperly. BST Br. 67. This purported "safeguard" is plainly insufficient, because the handbook carefully avoids restricting disclosures of this proprietary information within the BellSouth corporate family.[53/] The BOC should

53/ See Betz Aff., ex. DMB-10, at 4 (defining "BellSouth" to include all subsidiaries of BellSouth Corporation, thus including BSLD). The handbook does not specifically discuss what information from one BellSouth subsidiary an employee may use when transferring to another and in fact encourages "sharing information" among employees. Id. at 24.

give detailed instructions tailored to each employee about specific information that may not be used or disclosed in the new job and obtain a specific written commitment to abide by these instructions.[54]

Collocation. BSLD has entered into an agreement to purchase collocation space in BST facilities and has presumably implemented this agreement. See Wentworth Aff., ex. 4.[55] Carriers normally do not purchase collocation space until they need it because collocation involves substantial (indeed exorbitant) up-front non-recurring charges and monthly recurring charges. See Part VII.B.7, infra. Nevertheless, BSLD appears to have purchased (in what would be a paper transaction with no effect on BellSouth's bottom line) collocation space substantially before it will begin to provide in-region interLATA services. Collocation space is in short supply in BellSouth's territory, and the timing of these apparent transactions raises questions about whether BSLD has access on a discriminatory basis to information about exhaustion of collocation space and whether BSLD and BST are cooperating to preempt unaffiliated carriers that have a more urgent and serious need for the space. BellSouth's failure to provide a complete description of these collocation transactions is "highly relevant" to the Commission's predictive analysis, Mich. Order ¶ 366, and precludes a finding that BellSouth has demonstrated that it will comply with section 272 if and when it receives section 271 authorization.

54/ The need for concrete protective steps is confirmed by BellSouth's cavalier and recalcitrant corporate attitude. BellSouth's formal position in its South Carolina application was that it was under no obligation to ensure that BSLD employees do not use for BSLD's benefit confidential information they obtained as BST employees. BST SC Reply Comments 84-85. Similarly, BellSouth asserted in the proceedings on its first Louisiana application that if BSLD employees do use proprietary information that they learned as BST employees, BellSouth should not be required to disclose this information because of the "utter unworkability" of disclosure and "the absence of any statutory support." BST La. Reply Br. 103. Of course, section 272(c)(1) could not be more clear that a BOC has to provide information about its operations to all long distance carriers, unaffiliated and affiliated, on a nondiscriminatory basis. If BellSouth has no practical way to comply with its section 272 obligations if it transfers employees from BST to BSLD, then it must commit not to transfer employees in order to demonstrate future compliance.

55/ As with BellSouth's other disclosures, this agreement is vague: Section I(B) of the agreement states that "Interconnector [BSLD] may connect to other Interconnectors within the designated Central Office." This suggests that BSLD may connect with other interconnectors that are also collocated at the same central office without having to pay cross-connect charges, whereas other competitors have to pay such charges to do the same. Since the agreement does not preclude such a difference in treatment, it cannot be considered nondiscriminatory.

Introduction of New Services. A BOC may not discriminate between its 272 affiliate and unaffiliated IXCs. IXCs routinely require cooperation from the BOCs when they introduce new services that may require changes in interconnection and other arrangements between the BOC and the IXC. BellSouth's conclusory assertion that it will comply with this requirement begs the critical question: what concrete procedures has it implemented to translate this indefinite promise into a practical reality? To carry its burden of proof under section 271(d)(3)(B), a BOC must commit (1) to provide and regularly update a comprehensive list of the kinds of changes it will consider making at any IXC's request, (2) to disclose immediately to unaffiliated IXCs any information that it provides to its 272 affiliate in connection with the affiliate's request for new interconnection arrangements or other services, and (3) to disclose immediately any changes in existing interconnection arrangements or services that it made to accommodate its affiliate.

BellSouth Brand Name. As its name shows, BSLD will use the "BellSouth" brand name in marketing its long distance services. BellSouth considers its brand name to be extremely valuable, see Gilbert Aff. ¶ 28, and it does not deny that it built that value at least in part through substantial expenditures by BST. BSLD does not disclose any agreement with BST compensating BST for use of the brand name or for BST's contribution to the value of the brand name. Tacitly admitting that BSLD paid no such compensation, BellSouth has previously argued that the brand name belongs to BellSouth Corporation, not to BST. See BST SC Reply Comments 85. But the important issue for purposes of section 272 is not which entity owns the brand name, but whether a BOC has contributed to the value of a brand name that benefits a 272 affiliate providing service under the same brand name. BSLD's failure to compensate BST for the considerable sums that BST expended to promote the brand name gives BSLD a discriminatory competitive advantage.[56]

56/ Although the Commission has decided in the context of its general affiliate transaction rules that compensation for the value of brand names is not necessary, the Commission has not addressed this issue in the context of section 272. The language and purpose of section 272 dictate that the long distance affiliate compensate the BOC for the BOC's expenditures of ratepayer funds to increase the value of the brand name, and that this transaction be conducted on an arm's length, nondiscriminatory basis.

C. BellSouth Has Not Established Essential Performance Standards and Reporting for its Provision of Exchange Access.

As explained in Part III above, it is critical that BellSouth establish performance standards, and report on its compliance with those standards, in connection with its provision of interconnection, access, and resale to CLECs. Equally important for section 272 purposes, BellSouth must specify performance standards it will abide by for the provision of exchange access services to affiliated and unaffiliated IXCs, and it must provide reports on a regular basis sufficient to show whether it has complied with these standards and to permit its compliance to be audited consistent with section 272(d).

The Commission has established basic requirements to implement section 272(e)(1), which concerns nondiscrimination in the provision of exchange service and exchange access. See Non-Accounting Safeguards Order ¶ 242. Although the Commission has not yet released an order in CC Docket No. 96-149 establishing the precise format for nondiscrimination reporting, an applicant for section 271 relief bears the burden of showing that it will carry out its authorization in accordance with the requirements of section 272, which include the access service interval reporting requirements that the Commission has already interpreted section 272(e)(1) to incorporate. Contrary to BellSouth's claim in the Smith Affidavit (¶ 33), BellSouth must demonstrate that it is going to provide adequate access service nondiscrimination reporting right from the start, and cannot wait until the Commission releases an order on the questions raised by the "Further Notice" issued as part of the Non-Accounting Safeguards Order (¶¶ 362-89).[57]

57/ BellSouth claims that the ARMIS 43-05 and ONA reports provide all of the information necessary to determine the adequacy of its access services. Smith Aff. ¶ 33. However, the ARMIS 43-05 report presents only an aggregate measure of the BOC's provisioning intervals for all users combined and does not break out the BOC's affiliates from unaffiliated entities. That report also combines all types of access circuits in a single reporting category, whereas the reporting formats proposed in the Further Notice and in Attachment A of MCI's comments to the Further Notice (see ex. Z) would require the BOCs to report separately on intervals for at least three different types of circuits. See Non-Accounting Safeguards Order, App. C, 11 F.C.C.R. 22097. The Further Notice and MCI's proposed reporting format in exhibit Z also include a much more comprehensive set of measures than the ARMIS report. ONA reports are inadequate because, as the Commission explained in the Further Notice (¶ 375), they address only the provision of ONA unbundled elements to enhanced service providers, not the provision of exchange access to IXCs.

As MCI explained in its Comments in CC Docket No. 96-149, BOC nondiscrimination reports should show a three-way comparison for various installation and repair intervals for four different access service categories, in the format shown in exhibit Z to these Comments. The comparison should show the average intervals for services provided to the BOC's section 272 affiliate separate from the intervals for services provided to all unaffiliated carriers.[58/] The reports should include comprehensive ordering, installation, and repair intervals and measures, including intervals for acknowledgement, confirmation, promised delivery, and actual delivery of orders, and "PIC" change implementation, and measures for reject rates for orders and PIC changes.[59/]

Although BellSouth asserts that it will "continue to participate in public standards-setting bodies" and not "discriminate in favor of BSLD in the establishment of standards relating to interconnection or interoperability of public networks," Varner Aff. ¶ 227, BellSouth has not described performance standards that it commits to meet, nor specific reporting on its actual performance in relation to those standards. Indeed, BellSouth conclusorily states (without more) that it "will comply with applicable Commission monitoring and reporting requirements," Varner Aff. ¶ 238, and omits even to mention its promise in its first Louisiana section 271 application to develop additional reports to demonstrate nondiscrimination. See Varner 11/3/97 Aff. ¶ 212. BellSouth must complete development of, and commit to, specified standards and reporting systems before it is granted section 271 authorization.

D. BellSouth Has Not Adequately Disclosed Local Exchange Activities and Transactions In Which Its Section 272 Affiliate May Engage.

The Commission currently permits a BOC's section 272 affiliate to provide local exchange and exchange access services in addition to interLATA services. See Non-Accounting Safeguards Order

58/ After the separate affiliate requirement sunsets and the BOC provides long distance service itself, the reports should show the average intervals for services provided to the BOC's own long distance operations. Accordingly, Attachment A of exhibit Z shows three columns: "Provided to itself," "Provided to affiliates" and "Unaffiliated carriers."

59/ MCI is seeking reconsideration of the Commission's decision that service quality (as opposed to service interval) reporting is not necessary to ensure compliance with section 272(c)(1). See Non-Accounting Safeguards Order ¶ 323. BellSouth should commit that, if MCI's petition is granted, it will implement the reporting requirements proposed by MCI.

¶¶ 312-16. The combination of local and long distance functions in the section 272 affiliate presents obvious opportunities for evasion of the requirement that BOC local operations be structurally and operationally separate from the long distance affiliate.

BellSouth intends to provide through its subsidiary BellSouth Enterprises ("BSE") local exchange and exchange access services in its region without complying with the requirements of sections 251 and 252 of the 1996 Act.[60/] BellSouth's application, however, provides no information about the relationship between BSLD and BSE. The application is wholly silent on such basic questions as whether BSLD will purchase services from BSE or lease networks on a bundled or unbundled basis. BellSouth leaves open the possibility that BSE or its functions will be folded into BSLD, or vice versa. Nor does the application disclose how BellSouth will allocate responsibility to provide local and exchange and exchange access services between BST and BSE (or BSE's successor). As a result, the application provides no basis for the Commission to find that BST and BSLD will comply with section 272 notwithstanding the assumption by BSE (or BSLD) of local exchange and exchange access functions that BST would otherwise perform for BSLD subject to the safeguards in section 272.[61/]

In denying BellSouth's application, the Commission should make clear that future BOC applications must either (1) certify that the section 272 affiliate will not provide local exchange or exchange access services or obtain these services from any affiliate except the BOC or (2) disclose the local exchange or exchange access services that it or an affiliate other than the BOC will provide and

---

60/ See, e.g., Application of BellSouth BSE, Inc. for Authority to Provide Local Exchange Service, Case No. 97-417, Order (Kentucky PSC June 8, 1998) (denying BSE application to provide local exchange services in areas served by BellSouth) (ex. AA).

61/ Typical of BellSouth's refusal to disclose the terms of its relationship with BSE is its strenuous resistance, in a proceeding before the North Carolina Utilities Commission, to providing information concerning a BSE marketing study. The commission ultimately ordered BellSouth to provide the other parties with access to the study under a restrictive confidentiality order. See Application of BellSouth BSE, Inc., for a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Service as a Competing Local Provider in North Carolina, Docket No. P-691, Order Ruling on New Entrant's Second Data Request (Apr. 24, 1998) (ex. BB). As part of its section 271 application, BellSouth should be required to place this information before the FCC, subject to confidentiality protections, so as to clarify its relationship with BSE.

demonstrate that these services will be provided in a way that preserves the operational independence of the section 272 affiliate and ensures that it does not benefit from any discrimination or favoritism.

VII. KEY PRICES HAVE STILL NOT BEEN ANNOUNCED AND RATES THAT ARE OFFERED ARE SO INFLATED AS TO PRECLUDE LOCAL COMPETITION FOR MOST CUSTOMERS IN LOUISIANA

BellSouth's application is facially deficient because competitors still are missing key rates for collocation (which BellSouth requires for providing any service through unbundled elements), for enhanced services, and for facilities BellSouth insists on substituting when loops are served by IDLC facilities. In addition, BellSouth's rates for network elements are those adopted by the LPSC in October 1997, which are not cost-based and which reflect standards and assumptions inconsistent with forward-looking cost methodology. These rates, rather than fostering competition, are a formidable barrier to local entry in Louisiana.[62/]

A. There Are No Rates Associated with Significant Components of Collocation, xDSL, and IDLC, and BellSouth's Offer of CSAs at a Set Discount is Merely Interim.

BellSouth still has not specified a space preparation fee for physical collocation, making it difficult and risky for potential competitors to formulate business plans. These costs, which experience has shown can be enormous,[63/] are left to be determined by BellSouth on an individual case basis ("ICB"). Thus, BellSouth has reserved the determination of the nature and amount of this fee -- which is assessed on every collocator -- to its own discretion, and has been permitted to do so by the LPSC without any proceeding to ensure that the fee is cost-based.

62/ The Commission clearly has the authority to reject BellSouth's application on the basis that some rates have not been set at all. See SC Order ¶ 204. In addition, MCI contends that the Act requires the Commission to review whether the rates that have been set meet the requirements of section 271. See SBC Communications v. FCC, 138 F.3d 410, 416-17 (D.C. Cir. 1998) ("Congress has clearly charged the FCC, and not the State commissions, with deciding the merits of the BOCs' requests for interLATA authorization . . . ."). To the extent the Commission declines to address this second question in light of Iowa Utils. Bd., these issues should be preserved for appeal.

63/ For example, BellSouth has charged space preparation fees in Florida as high as $150,000 in Miami, $96,000 in Hollywood and $114,000 and 77,300 in Orlando. See Wood Decl. ¶ 26.

Physical collocation is a critical component of interconnection and access to unbundled network elements and, as the Department of Justice has stated, "the absence of reasonable and predictable prices for collocation threatens to act as a formidable barrier to entry." DOJ La. Eval. at 26. Indeed, leaving the rate for a significant component of physical collocation to be determined on a case-by-case basis "rais[es] the possibility of unreasonable prices and drawn out negotiations that have the effect of precluding competitive entry." Id. at 27. Moreover, as the Georgia PSC found, it introduces unnecessary uncertainty into the process of obtaining collocation, deterring potential competitors from making such an investment. See Order Establishing Cost-Based Rates, GPSC Docket No. 7061-U (Dec. 16, 1997) ("Georgia Pricing Order") at 61 (rejecting BellSouth's proposal for charging space preparation on an ICB and adopting a specific charge) (Wood Decl. Att. 1). For these reasons, local markets in Louisiana cannot be considered fully or irreversibly open to competition at this time.

There are also no established rates for the special construction activities required if the existing loop must be modified to support xDSL facilities. For example, some existing loops may require load coils to be removed or bridge taps to be minimized. Other loops may require modification to an existing digital loop carrier system, by the addition of line cards or modems. See Wood Decl. ¶¶ 29-30. No non-recurring rates currently exist for xDSL loops where any of these modifications are required. The absence of reasonable and predictable rates for these charges acts as a formidable barrier to local entry, especially given the expected surge in demand for xDSL loops in the coming years. See id.

Further, there are no rates for the facilities BellSouth insists on substituting when loops are currently served by IDLC facilities and neither copper facilities or NGDLC are available. BellSouth insists that CLECs must incur the expense of bypassing BellSouth's IDLC facilities, but these costs are not specified by BellSouth and have not been set by the LPSC. See Milner Aff. ¶¶ 58-60; Wood Decl. ¶¶ 31-32. This uncertainty necessarily causes competitors to be reluctant to commit resources to enter the local market on a large scale. See Wood Decl. ¶ 33.

Finally, BellSouth has committed to provide contract service arrangements ("CSAs") at the current wholesale discount of 20.72 percent only until the LPSC sets a special discount applicable to CSAs. See Attachment H to BellSouth's Proposed Revisions to SGAT (April 30, 1998) at 1 (BST App. C-1, Tab 144). The LPSC has decided to consider the question of a special discount. See LPSC Ex Parte Order No. U-22252-B (July 1, 1998) (BST App. C-1, Tab 150). Until a final decision is made, no competitor can make plans based on a wholesale price for CSAs. Wood Decl. ¶¶ 167-73. BellSouth's application is premature until the LPSC determines the discount consistent with section 252(d)(3).

As a result, two of the three methods Congress developed for entry into the BOCs' monopoly market -- leasing of unbundled network elements and resale -- are impeded and local markets cannot be deemed fully and irreversibly open to competition at this time. See La. Order ¶ 68.

B. Those Rates That Have Been Set Are Not Cost-Based And Act As Barriers To Competition For Local Telephone Service In Louisiana.

In adopting rates proposed by its staff consultant, the LPSC both rejected the final recommendation of the ALJ and ignored the reservations expressed by the staff consultant. The staff consultant admitted she had been significantly limited in the scope and thoroughness of her analysis by a time constraint of one week. See Hearing Transcript, LPSC Docket No. U-22022 ("Hearing Transcript") (examination of Dismukes) at 2925, 3109-11, 3119-20 (BST App. C-3, Tabs 281). In contrast, the ALJ had reviewed the cost studies submitted by BellSouth, MCI and AT&T and heard the testimony of 34 witnesses. See LPSC Order No. U-22022/22093-A (Oct. 24, 1997) ("10/24/97 Order") at 4-5 (BST App. C-3, Tab 293). The ALJ was properly concerned about the staff consultant's approach and analysis and disagreed with many of her key recommendations. For example, the ALJ determined, contrary to the consultant, that (i) geographic deaveraging is required; (ii) the physical collocation cost model submitted by MCI and AT&T was appropriate; and (iii) further proceedings and new studies were necessary to allow adequate review of BellSouth's assertions with respect to vertical features and depreciation, respectively. See ALJ Final Recommendation, Docket No. U-22022 (Oct. 17, 1997) ("ALJ Final Rec.")

at 24-25 (BST App. C-3, Tab 292). Nonetheless, the LPSC, with little explanation, rejected the ALJ's conclusions and adopted the staff consultant's rates as "permanent cost-based rates." See 10/24/97 Order at 4-5. As a result, BellSouth's unbundled network elements are offered at these hastily-determined and highly inflated rates.

1. The Rates BellSouth Charges Are Not Geographically Deaveraged and, Therefore, Do Not Satisfy the Requirements of Sections 271(c)(2)(B)(i) and (ii)

A significant deficiency of the rates BellSouth charges is that they are not geographically deaveraged. The LPSC relied on the proposed rates of the staff consultant, who did not undertake a geographic deaveraging analysis. See Hearing Transcript (examination of Dismukes) at 3091. Rates that are not geographically deaveraged wholly fail to meet sections 271(c)(2)(B)(i) and (ii) of the Act, as the Commission has expressly found. See Mich. Order ¶ 292; Local Competition Order ¶ 764.[64/] The statewide averaged rates BellSouth charges significantly overstate the costs of interconnection and unbundled network elements in the more densely populated areas of Louisiana. For example, in the most densely populated areas of the state, BellSouth's statewide averaged monthly rate for a 2-wire analog loop is $19.35 whereas a geographically deaveraged monthly rate for this zone would be approximately $10 less. These inflated rates will continue to deter local competition in Louisiana. See Wood Decl. ¶¶ 46-57.

64/ BellSouth's own witnesses admit that geographically deaveraged rates best reflect costs in urban and rural areas. See Varner Rebuttal Testimony, LPSC Docket No. U-22022 (Sept. 5, 1997) ("Varner Rebuttal") at 33-35 (BST App. C-3, Tab 273); Scheye Direct Testimony, LPSC Docket No. U-22022 (July 11, 1997) at 27 (BST App. C-3, Tab 273). Despite this admission, BellSouth offers its competitors only statewide averaged rates. BellSouth's position is that geographic deaveraging should not precede the development and implementation of specific and predictable universal service support mechanisms. See Varner Rebuttal at 33-35. But section 271(d)(3)(A)(i) requires that BellSouth have fully implemented the competitive checklist at the time of filing a section 271 application, and this is only done if rates are cost-based now -- not sometime in the future. Moreover, at present, the LPSC has not even opened a docket to deaverage rates.

2. The Loop Rates BellSouth Charges Are Inflated by the Embedded Costs of BellSouth's Existing Network Configuration and by BellSouth's Deliberate Distortion of its Loop Sample

The loop rates available to competitors in Louisiana are much higher than the costs of an unbundled loop. One significant reason is that they are based on BellSouth's existing network configuration and guarantee BellSouth recovery of historic and embedded costs, however inefficient. See Wood Decl. ¶ 58. Loop rates that reflect the embedded characteristics of BellSouth's existing network are wholly inconsistent with sections 271(c)(2)(B)(i) and (ii) of the Act. These sections mandate that BellSouth provide interconnection and network elements in accordance with the pricing standards set forth in section 252(d)(1).

Section 252(d)(1) requires that prices for interconnection and network elements shall be based on cost, "determined without reference to a rate-of-return or other rate-based proceeding." In other words, prices should not reflect the embedded characteristics of BellSouth's existing network configuration. See Wood Decl. ¶¶ 59-63. The LPSC recognized this and specifically adopted Michigan cost principle number 7, which states that "costs should be forward-looking, i.e., they should not reflect the company's embedded costs." See 10/24/97 Order at 3-4 (emphasis added). The LPSC nonetheless ignored its own position when it permitted BellSouth to base loop rates on the costs of its existing network configuration. For example, BellSouth's inclusion of its smaller, inefficient cable sizes alone increases the estimated investment by almost 50 percent. Overall, BellSouth's inclusion of the embedded costs associated with its existing network configuration appears to raise loop rates in Louisiana by at least 20-25 percent. See Wood Decl. ¶¶ 71-74.

BellSouth also increased its loop rates by deliberately omitting shorter and less costly multi-business loops from its loop sample. The LPSC failed to correct this omission. By skewing its loop sample, BellSouth overstated average loop length and, therefore, average loop price. See id. ¶¶ 75-88; see also Hearing Transcript (examination of Caldwell) at 407-15 (BST App. C-3, Tab 274) (acknowledging that the excluded loops are likely to be shorter and less costly, and admitting that if these loops had been included in the sample, loop rates would have been lower).

3. The Loop Rates BellSouth Charges Are Further Inflated Because They Are Based on Old-fashioned UDLC Facilities, Not Forward-looking, Efficient, and Less Costly IDLC Facilities

The loop rates BellSouth charges are also inflated because they are based on the costs of UDLC facilities for every loop that is provisioned using a digital loop carrier system. See Wood Decl. ¶ 89. BellSouth acknowledges that UDLC is not a forward-looking, least-cost, or efficient technology and admits that BellSouth itself is now deploying IDLC facilities to serve its own customers. Hearing Transcript at 363-64, 565-66 (examination of Caldwell). Yet for purposes of pricing, BellSouth assumed that the more costly and less efficient UDLC facilities were being used. See Hearing Transcript (examination of Caldwell) at 364-65; Hearing Transcript (examination of Carter) at 2396-97 (BST App. C-3, Tab 279).

BellSouth's assumption is a deliberate attempt to keep loop rates high and preclude competition. UDLC is two to three times more expensive than IDLC, and these added costs significantly contribute to the inflated recurring loop rates adopted by the LPSC. See Wood Decl. ¶ 96. The assumption of UDLC also inflates non-recurring costs and therefore rates. IDLC technology, which BellSouth admits is the forward-looking technology, allows for flow-through provisioning and maintenance from upstream OSS systems with little or no human intervention. UDLC requires engineering and work groups not required by IDLC, such as a technician manually placing cross-connects. Assuming that all digital loop carrier loops will be UDLC results in significantly inflated non-recurring charges. See Wood Decl. ¶ 97.[65/]

65/ Moreover, BellSouth's pricing is even further divorced from the Act's requirements, and from reality, because BellSouth's plan for providing CLECs loops served by IDLC facilities is to provide either copper pairs or newer versions of IDLC (NGDLC). Only rarely does BellSouth plan to provide UDLC facilities instead, and when it does, it intends to charge competitors an additional amount to pay for their construction. See Milner Aff. ¶¶ 58-60. Thus, the UDLC assumption underlying the loop rates BellSouth charges is virtually a complete fiction.

4. The Non-recurring Rates BellSouth Charges Are Also Inflated by the Inclusion of Unjustifiable Manual Labor Costs

BellSouth's non-recurring charges are greatly inflated and represent a significant barrier to entry. One glaring deficiency is that they inappropriately include unjustifiable manual labor tasks. See Wood Decl. ¶ 115. For example, the non-recurring charges for xDSL loops are $343.13 for 2-wire ADSL and 2-wire HDSL, and $361.45 for 4-wire HDSL. These extremely high charges are principally driven by the high costs of manual labor. BellSouth assumes that it will require 3.0833 hours for an employee to conduct an office inquiry to find out if facilities are available to provision each xDSL circuit -- accounting for over one-third of the work time required to provision an xDSL loop. Further, BellSouth's non-recurring charge is the same even if it is already providing xDSL service to a customer and that customer is simply migrating to a competitor. In other words, even when BellSouth has been providing xDSL service to a customer, knows that facilities are available to provision an xDSL loop, and has fully connected and tested the loop, BellSouth will still charge the full non-recurring rate, which includes the cost of checking whether the loop can be used for xDSL services. This is yet another attempt by BellSouth to impede local competition. See Wood Decl. ¶¶ 116-19.

The non-recurring rates BellSouth charges for other loops are also based on systematically inflated cost estimates. For example, BellSouth assumes that 20 percent of the 2-wire analog voice grade loops ordered by CLECs will be new connections for previously nonexisting customers and that 80 percent will be for existing customers that decide to switch to a BellSouth competitor. Given that the staff consultant testified that loop growth is 4.8 percent,[66/] BellSouth's assumption that 20 percent of 2-wire loop orders will be new connects is inexplicable and dramatically overstated. See Wood Decl. ¶¶ 120-22. The result, because BellSouth assumes far higher labor costs for new connects than for switching customers with existing services, is a significantly higher up-front non-recurring charge for a

66/ See Testimony of Kimberly H. Dismukes, LPSC Docket No. U-22022 (Sept. 22, 1997) at 45 (BST App. C-3, Tab 281).

2-wire loop than necessary to fully compensate BellSouth. Just adjusting this one calculation, and assuming that only 4.8 percent of the 2-wire analog loops ordered by CLECs would be new connects, would reduce the non-recurring charges for these loops by over 30 percent. See id.. ¶¶ 122-23.

5. The Costs of OSS Development Are Imposed Solely on New Entrants and Are a Significant Barrier to Entry

BellSouth charges $9.16 per electronic order, as a non-recurring charge for BellSouth's costs of developing the OSS gateway which allows BellSouth's OSS to interface with CLECs' ordering systems. These costs are imposed solely on new entrants. This charge is wholly inappropriate. Since each participant in the local market will have to establish new and costly processes to interface their electronic ordering systems effectively, each party should be responsible for its own costs in this area. In Louisiana, however, new entrants have to pay to develop two gateways, BellSouth's and their own, while BellSouth pays for none. This is a classic barrier to entry -- a cost borne by an entrant that is not borne by the incumbent. See id. ¶¶ 124-26. Moreover, imposing all the costs on competitors eliminates any incentive for BellSouth to develop the most efficient gateway possible. Id. ¶ 126 n.35. Further, although the $9.16 non-recurring charge for OSS recovery is based on BellSouth's calculation for full recovery over three years, BellSouth has not provided for the charge to terminate after that period. See id. ¶ 127.

6. BellSouth's Charge for Vertical Features Significantly Exceeds Cost and Is a Barrier to Entry

BellSouth's recurring charge of $8.28 for all vertical features, in addition to and separate from the recurring and non-recurring switch port charges and recurring per minute of use local switching charge, is wholly inappropriate and results in BellSouth's over-recovery for switching features and continued control of particularly lucrative services. See Wood Decl. ¶¶ 128-46. As the Georgia PSC recently concluded, "vertical features should not be priced separately as individual elements, but should instead be incorporated within the unbundled switch port element." Georgia Pricing Order at 41.

Vertical features are provided via the switch's computer processor, and the costs of setting up the features in the switch processor are already recovered through the price of the port. As long as the switch processor has adequate capacity -- which all do in Louisiana, as switch processors are consistently underused[67/] -- the only costs caused by a competitor ordering features are right-to-use fees and, for a very few vertical features, special hardware. These costs are also part of the initial, up-front costs of the switch and are already recovered by BellSouth through the port charge or minute-of-use local switching charge, and possibly both. See Wood Decl. ¶¶ 140-44.

BellSouth's imposition of a separate vertical features charge of $8.28, which the LPSC's staff consultant admitted she was not certain was correct and thought needed further study, has a very large anticompetitive impact. Furthermore, because vertical features are a lucrative profit center for BellSouth and will almost always be provided by competitors at a loss (because of the $8.28 charge), the charge permanently places new entrants at a serious disadvantage. See id. ¶¶ 145-46.

7. BellSouth's Collocation Rates Are Prohibitively and Unnecessarily Expensive and Will Deter Entry into Local Exchange Markets

BellSouth's physical collocation charges are not efficient or forward-looking and deter local competition. For example, BellSouth's rates reflect the cost of using gypsum and drywall for construction, which is entirely unnecessary and considerably more expensive and time consuming than constructing a metal cage, and necessitates additional costs for lighting and ventilation not incurred if cage construction is used. Although other ILECs, such as Bell Atlantic, offer cage construction for collocation spaces, the only option in Louisiana is a drywall "luxury collocation condo." See Tipton Decl., Ex. 2 (Collocation Handbook) § 3.6. Because BellSouth's construction requirements cost approximately three times more than a metal cage, BellSouth has significantly raised the entry costs for its competitors at no cost to itself. See Wood Decl. ¶¶ 147-53.

67/ See Testimony of Catherine E. Petzinger, LPSC Docket No. U-22022/22093 (Aug. 25, 1997) at 22-23 (BST App. C-3, Tab 267).

8. BellSouth Imposes the Full Cost of Interim Number Portability on New Entrants, Which Is Inconsistent with Section 251(e)(2)

The Commission has determined that an interim number portability cost recovery mechanism that is borne by all telecommunications carriers on a competitively neutral basis, consistent with section 251(e)(2), must satisfy two criteria. First, it should not give one service provider an appreciable, incremental cost advantage over another service provider when competing for a specific subscriber. Id. ¶ 132. Second, it should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments. Id. ¶ 135. "A cost-recovery mechanism that imposes the entire incremental cost of currently available number portability on a facilities-based new entrant would violate" the competitively neutral principle. Id. ¶ 134 (emphasis added). The interim number portability rates adopted by the LPSC and currently offered by BellSouth charges new entrants the entire cost of interim number portability. See id. ¶ 156. This approach clearly violates section 251(e)(2) of the Act.[68/]

9. BellSouth's Failure to Agree to Symmetrical Reciprocal Compensation Ensures Itself a Competitive Advantage over New Entrants

Section 271(c)(2)(B)(xiii) requires that terms and conditions for mutual and reciprocal recovery of cost of call transport and termination be established that do not provide a competitive advantage to either carrier. BellSouth's refusal to agree to symmetrical reciprocal compensation violates this requirement. If the recovery of costs associated with the termination of a call that originates on a competitor's network is truly reciprocal, no provider will obtain a competitive advantage from the arrangement. But such an outcome can only be assured if compensation is based on the function being performed – the termination of the call – rather than on the point of interconnection (i.e., end office or tandem). At a minimum, terms for recovery must not reward BellSouth for network inefficiencies it may

68/ The Commission's authority to review local number portability issues in light of section 251(e) is undisputed. See Iowa Utils. Bd. at 794 & n.10 (recognizing that Congress had expressly called for the FCC's involvement in certain areas, including section 251(e)).

experience relative to new entrants, or punish new entrants for network inefficiencies they may experience relative to BellSouth. See id. ¶ 159-62.

For example, the forward-looking efficient configuration for a local network consists of fewer switching locations and longer transport links, whereas BellSouth uses multiple end office switches and a tandem switch. See also Part V.B above (MCI's use of ring technology). If compensation is based on equipment used, as the rates offered by BellSouth are, a new entrant will only be "mutually and reciprocally" compensated if it duplicates the inefficient network arrangements used by BellSouth. This is clearly not what Congress intended to encourage. The solution is for BellSouth and new entrants to be compensated identically for transport to the same area, regardless of the particular network arrangement employed. See id. ¶¶ 163-65.

Because the LPSC has not ordered and BellSouth has not agreed to that rate structure, it will almost always cost a new entrant more to have calls terminated by BellSouth than it will cost BellSouth to have calls terminated by a new entrant. This is another permanent impediment to competition and further evidence that Louisiana's local telephone market cannot be considered fully and irreversibly open to competition at this time. See id. ¶ 166.

VIII. BELLSOUTH'S ENTRY INTO THE LONG DISTANCE MARKET IN LOUISIANA WOULD BE CONTRARY TO THE PUBLIC INTEREST

The Act charges the Commission with the responsibility of determining whether a particular BOC application to enter the long distance market "is consistent with the public interest, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). Despite the rosy gloss put on the facts by BellSouth and its legion of economists, BellSouth's entry into the long distance market at a time when effective local competition is not yet established would significantly harm the public interest, for at least the following reasons:

- The degree of local competition is too trivial to act as a check on BellSouth's incentive to discriminate.

- Local competition will never materialize if the "carrot" of section 271 entry is prematurely given.
- BellSouth's failure to reduce access charges to cost -- the result of minimal local service competition and the lack of universal service reform -- means that long distance competitors are unfairly handicapped in competing with BellSouth's long distance affiliate.
- The addition of yet another long distance provider would provide little or no benefit to the already highly competitive long distance market and would therefore not offset the harms to local and long distance competition from premature entry.

In addition, the public interest would be ill-served by rewarding BellSouth's apparent tactic of filing rapid-fire, premature section 271 applications. Coming only five months after the Commission ruled on BellSouth's last application to offer long distance in Louisiana, BellSouth's new application for long distance authority can only be considered an effort to wear down the regulators and the other interested parties. BellSouth simply has not yet resolved technical and other deficiencies or has affirmatively chosen to erect and maintain numerous barriers to entry discussed in these Comments and in parts B and C, below.

A. Local Competition Has Not Developed to Any Meaningful Degree in Louisiana.

When the Commission addressed the public interest test in its Michigan Order, it determined that a critical prerequisite to Section 271 approval is "whether all procompetitive entry strategies are available to new entrants." Id. ¶ 387. The Commission explained that the best proof of the availability of these entry strategies is "data on the nature and extent of actual local competition." Id. ¶ 391. Here, all reliable indicators of local competition show that, at best, competition is extremely limited in Louisiana, with local competitors accounting for much less than one percent of local loops.

As a long-distance carrier, MCI collects data concerning the number of switched access minutes it terminates to BellSouth and other local exchange carriers in Louisiana. This information provides a sound approximation of the extent to which local competition has developed, because MCI serves a broad base of business and residential customers whose calls should be terminated in proportion to the activity of market activity of local carriers. According to MCI's internal data, CLECs terminated only